

From: [John Karin](#)
To: [Dettmer, Ethan](#)
Cc: MByars@cravath.com; [Bracht, Jennifer K.](#); [Lauren Kloss](#)
Subject: Re: Apple App Cases -- Apple Clawback [HCI]
Date: Tuesday, April 27, 2021 3:19:22 PM

[External Email]

Ethan,

Apple may file the exhibits if it prefers.

Best,

On Apr 27, 2021, at 2:55 PM, Dettmer, Ethan <EDettmer@gibsondunn.com> wrote:

Brent – as I’m sure you noticed, one of the documents I attached to the below email was not the correct document. Please do not file that. Unless you plan on completing the filing shortly, we will do so with the correct documents.

From: Dettmer, Ethan
Sent: Tuesday, April 27, 2021 10:42 AM
To: Brent Byars <MByars@cravath.com>
Cc: John Karin <jkarin@cravath.com>; Bracht, Jennifer K. <JBracht@gibsondunn.com>; Lauren Kloss <lkloss@cravath.com>; jrosenkranz@orrick.com; wstute@orrick.com; Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>
Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Brent – there has been no “delay.” We have responded promptly, particularly given your unreasonable deadline.

Apple’s revisions to its portion of the letter are attached, along with the documents to be appended. This should be filed provisionally under seal, given that the deposition transcript excerpts are designated under the Protective Order.

From: Brent Byars <MByars@cravath.com>
Sent: Tuesday, April 27, 2021 10:07 AM
To: Dettmer, Ethan <EDettmer@gibsondunn.com>
Cc: John Karin <jkarin@cravath.com>; Bracht, Jennifer K. <JBracht@gibsondunn.com>; Lauren Kloss <lkloss@cravath.com>; jrosenkranz@orrick.com; wstute@orrick.com; Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com;

bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>;
tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com;
DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam
<AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Ethan, the rhetoric isn't helpful. It is also incorrect; Epic did not take "weeks" to challenge Apple's clawback, as you have stated, and that also has nothing to do with Apple's ability to respond to the joint letter brief on a timely basis. In any event, we added just one clause last night. We don't expect that it would take very long to review that with your client. Please provide your sign-off immediately. Further delay is unacceptable.

From: Dettmer, Ethan <EDettmer@gibsondunn.com>

Sent: Tuesday, April 27, 2021 8:55 AM

To: Brent Byars <MByars@cravath.com>

Cc: John Karin <jkarin@cravath.com>; Bracht, Jennifer K. <JBracht@gibsondunn.com>; Lauren Kloss <lkloss@cravath.com>; rosenkranz@orrick.com; wstute@orrick.com; Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com;
DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam
<AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Brent – we will have edits to the letter brief. It is not reasonable for you to demand a response to your 11:21 p.m. draft by 9 a.m. the next morning, particularly given the many pretrial deadlines today and over the coming days, and given your own delay in raising this issue in the first place. We are reviewing with our client and will respond to you promptly.

Ethan

From: Brent Byars <MByars@cravath.com>

Sent: Tuesday, April 27, 2021 6:22 AM

To: Dettmer, Ethan <EDettmer@gibsondunn.com>

Cc: John Karin <jkarin@cravath.com>; Bracht, Jennifer K. <JBracht@gibsondunn.com>; Lauren Kloss <lkloss@cravath.com>; rosenkranz@orrick.com; wstute@orrick.com; Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com;
DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam
<AppleAppStoreDiscovery@gibsondunn.com>

Subject: Re: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Ethan,

As you can see from the blackline, in response to Apple's last round of edits, Epic added one clause and deleted a few words. It would be surprising if Apple had substantial further edits. Please provide Apple's signature and the answers to John's questions by 9 a.m. today.

Brent

On Apr 26, 2021, at 11:31 PM, Dettmer, Ethan <EDettmer@gibsondunn.com> wrote:

John – I have reviewed your redline. We are likely to have edits to this, and I will not be able to get approval for filing tonight, given the hour. Thus you do not have our approval to file. We will address this in the morning.

Thanks,

Ethan

From: John Karin <jkarin@cravath.com>

Sent: Monday, April 26, 2021 11:21 PM

To: Bracht, Jennifer K. <JBracht@gibsondunn.com>; Lauren Kloss <lkloss@cravath.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; MByars@cravath.com; jrosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Jenn,

I have attached a revised draft and redline, reflecting a very limited number of edits.

Please confirm that we have Apple's approval to file and indicate whose signature we should use.

Please also confirm whether Apple would like Epic to include the correspondence attached to your email below as exhibits, and if so, whether Apple requests that Epic file them under seal.

Thank you,

John I. Karin

Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1122 (direct)
(212) 474-3700 (fax)

From: Bracht, Jennifer K. <JBracht@gibsondunn.com>

Sent: Monday, April 26, 2021 9:27 PM

To: Lauren Kloss <lkloss@cravath.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; Brent Byars <MByars@cravath.com>; John Karin <jkarin@cravath.com>; rosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Lauren,

Apple's edits to its position in the joint letter brief and the relevant correspondence cited therein are attached, along with a redline against the version of the letter brief that Epic sent this afternoon.

Apple does not intend to seal any portion of the letter brief.

Jenn

Jennifer Bracht

GIBSON DUNN

Gibson, Dunn & Crutcher LLP
1801 California Street, Denver, CO 80202-2642
Tel +1 303.298.5737 • Fax +1 303.313.2848
JBracht@gibsondunn.com • www.gibsondunn.com

From: Lauren Kloss <lkloss@cravath.com>

Sent: Monday, April 26, 2021 9:16 PM

To: Bracht, Jennifer K. <JBracht@gibsondunn.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; MByars@cravath.com; John Karin <jkarin@cravath.com>; rosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele

<Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC
EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Counsel,

We sent our revised portion of this joint letter brief at 3:01pm PT. Please advise immediately when we should expect to receive Apple's revised portion.

Lauren Kloss

Not Admitted in New York
Cravath, Swaine & Moore LLP
825 Eighth Avenue | New York, NY 10019
(212) 474-1629
lkloss@cravath.com

From: Lauren Kloss

Sent: Monday, April 26, 2021 3:01 PM

To: 'Bracht, Jennifer K.' <JBracht@gibsondunn.com>; Dettmer, Ethan
<EDettmer@gibsondunn.com>; Brent Byars <MByars@cravath.com>; John Karin
<jkarin@cravath.com>; jrosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com;
shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel
<ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele
<Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC
EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Counsel,

Please see attached Epic's revised portion of the joint letter brief, as well as a redline against the version we received yesterday at 5:44 pm PT. Epic reserves the right to make further edits. Please let us know whether Apple intends to seal any portion of the letter brief.

Lauren

Lauren Kloss

Not Admitted in New York
Cravath, Swaine & Moore LLP
825 Eighth Avenue | New York, NY 10019
(212) 474-1629
lkloss@cravath.com

From: Bracht, Jennifer K. <JBracht@gibsondunn.com>

Sent: Sunday, April 25, 2021 5:44 PM

To: Dettmer, Ethan <EDettmer@gibsondunn.com>; Brent Byars <MByars@cravath.com>; John Karin <jkarin@cravath.com>; jrosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Brent,

Please see attached for Apple's portion of the joint letter brief.

Jenn

Jennifer Bracht

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1801 California Street, Denver, CO 80202-2642
Tel +1 303.298.5737 • Fax +1 303.313.2848
JBracht@gibsondunn.com • www.gibsondunn.com

From: Dettmer, Ethan

Sent: Sunday, April 25, 2021 4:33 PM

To: MByars@cravath.com; John Karin <jkarin@cravath.com>; jrosenkranz@orrick.com; wstute@orrick.com

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>; Bracht, Jennifer K. <JBracht@gibsondunn.com>

Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Brent: we are conferring with our client about the response, and should be able to send you our half later this evening. As we have discussed, you had our clawback letter for weeks before raising this issue with us, and any delay is of your making, not ours.

Ethan

From: Brent Byars <MByars@cravath.com>

Sent: Sunday, April 25, 2021 3:44 PM

To: Bracht, Jennifer K. <JBracht@gibsondunn.com>; John Karin <jkarin@cravath.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>; rosenkranz@orrick.com; wstute@orrick.com
Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>
Subject: RE: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Apple counsel—

We have not received any response, despite Epic's request on Thursday that Apple return its half by noon today. Please send Apple's half immediately.

We will be filing the letter brief tomorrow, and Epic needs time to react to the declarations Apple has stated it would submit.

Brent

From: Brent Byars <MByars@cravath.com>

Sent: Thursday, April 22, 2021 8:09 PM

To: Bracht, Jennifer K. <JBracht@gibsondunn.com>; John Karin <jkarin@cravath.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>; rosenkranz@orrick.com; wstute@orrick.com
Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>
Subject: RE: Apple App Cases -- Apple Clawback [HCI]

Jenn and Ethan,

Please see attached Epic's half of a draft joint letter brief concerning this issue. As we discussed during our meet and confer, Epic believes this dispute should be resolved before trial begins and accordingly intends to file the joint brief on Monday. Please send Apple's half and any supporting declarations Apple intends to submit by noon on Sunday so Epic can react to those materials and prepare the brief for filing. That should be manageable because Apple has had Epic's position in writing since April 17, and we provided further information and indicated our intent to brief the dispute during the call on Tuesday. Also please indicate Apple's position on whether it will request sealing of any portion of the brief and which such portion.

Thanks,

Brent

From: Bracht, Jennifer K. <JBracht@gibsondunn.com>
Sent: Tuesday, April 20, 2021 12:26 PM
To: John Karin <jkarin@cravath.com>; Dettmer, Ethan <EDettmer@gibsondunn.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>; jrosenkranz@orrick.com; wstute@orrick.com
Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>
Subject: RE: Apple App Cases -- Apple Clawback [HCI]

John,

We are available between 12:30 pm and 3 pm PST. Please circulate a dial-in to myself and Ethan Dettmer for a time that works for you in that window.

Jenn

Jennifer Bracht

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Gibson, Dunn & Crutcher LLP
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Sent: Tuesday, April 20, 2021 9:13 AM
To: Dettmer, Ethan <EDettmer@gibsondunn.com>; *** GDC EpicLitTeam <AppleAppStoreDiscovery@gibsondunn.com>; jrosenkranz@orrick.com; wstute@orrick.com
Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; steve@hbsslaw.com; robl@hbsslaw.com; shanas@hbsslaw.com; bens@hbsslaw.com; benh@hbsslaw.com; Ronnie Spiegel <ronnie@hbsslaw.com>; tedw@hbsslaw.com; rifkin@whafh.com; Byrd, Rachele <Byrd@whafh.com>; guiney@whafh.com; DeJong, Brittany <dejong@whafh.com>
Subject: RE: Apple App Cases -- Apple Clawback [HCI]

[External Email]

Apple Counsel,

Please respond to the below correspondence. If you would like to meet and confer, please indicate

your availability as soon as possible.

Thank you,

John I. Karin
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1122 (direct)
(212) 474-3700 (fax)

From: John Karin

Sent: Saturday, April 17, 2021 11:52 PM

To: Dettmer, Ethan <EDettmer@gibsondunn.com>; *** GDC EpicLitTeam
<AppleAppStoreDiscovery@gibsondunn.com>; 'jrosenkranz@orrick.com'
<jrosenkranz@orrick.com>; 'wstute@orrick.com' <wstute@orrick.com>

Cc: Epic Mobile Apps <epic-mobileapps@cravath.com>; 'steve@hbsslaw.com'
<steve@hbsslaw.com>; robl@hbsslaw.com; shanas@hbsslaw.com; Ben Siegel (bens@hbsslaw.com)
<bens@hbsslaw.com>; benh@hbsslaw.com; 'Ronnie Spiegel' <ronnie@hbsslaw.com>;
tedw@hbsslaw.com; 'rifkin@whafh.com' <rifkin@whafh.com>; 'Byrd, Rachele' <Byrd@whafh.com>;
'guiney@whafh.com' <guiney@whafh.com>; DeJong, Brittany <dejong@whafh.com>

Subject: Apple App Cases -- Apple Clawback [HCI]

Apple Counsel,

Please see the attached correspondence.

Best,

John I. Karin
Cravath, Swaine & Moore LLP
825 Eighth Avenue
New York, NY 10019-7475
(212) 474-1122 (direct)
(212) 474-3700 (fax)

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